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OFFICE OF PETITIONS

In re Application of :
Smith, et al. : DECISION ON PETITION
Application No. 10/604,419 :
Filed: July 18, 2003 :
Docket No.: FIS920030154 :

This decision is in response to the petition filed May 5, 2006 under 37 CFR 1.181 to withdraw the holding of abandonment in the above-identified application. This decision corrects the decision inadvertently mailed June 1, 2006 to the incorrect correspondence address.

The petition is GRANTED.

The application was held abandoned February 18, 2006 for failure to timely submit a proper reply to the Notice of Allowance (Notice) mailed November 17, 2005, which set a three month statutory period of time for reply. Notice of Abandonment was mailed April 10, 2006.

Petitioners assert non-receipt of the Notice mailed November 17, 2005.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above

may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner's arguments and supporting documentation have been carefully considered and support petitioner's conclusion that the Notice mailed November 17, 2005 was not received.

In view thereof, the Notice of Abandonment is hereby VACATED and the holding of abandonment is WITHDRAWN.

This application is being forwarded to Technology Center 2600 for re-mailing of the Notice.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3205.



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Office of Petitions